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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIC YOHAN ROJAS GUANCHÁ,
individually,

Plaintiff,

v.

DENNIS PERO, an Individual; RYDER TRUCK RENTAL, a Florida Corporation; UNITED STATES POSTAL SERVICE; DOES I through V; and ROE BUSINESS ENTITIES, I through V.

Defendants.

Case No. 2:24-cv-02141-APG-MDC

**United States' Notice of Substitution of
Parties and Motion to Update Case
Caption and Docket Sheet**

DENNIS PERO, an Individual; RYDER TRUCK RENTAL, a Florida Corporation; UNITED STATES POSTAL SERVICE; DOES I through V; and ROE BUSINESS ENTITIES, I through V.

Defendants.

The United States of America gives notice that, by operation of law under 28 U.S.C. § 2679(d), commonly known as the Westfall Act, the United States is hereby substituted as the defendant in place of Dennis Pero. Given this substitution, the United States moves to update the case caption and docket sheet. The United States attaches a proposed order for the court's consideration.

Memorandum of Points and Authorities

Plaintiff Eric Yohan Rojas Guancha brought this personal-injury case in Nevada state court for injuries he allegedly sustained in a motor vehicle accident with defendant Dennis Pero. Pero is an employee of the United States Postal Service (“USPS”). The United States Attorney for the District of Nevada certified that at the time of the accident,

1 Dennis Pero was acting within the scope of his federal employment. (United States' Not. of
2 Removal (ECF No. 1) at Ex. B.)

The Westfall Act gives federal employees immunity from suit based on “negligent or wrongful” acts or omissions under state law. 28 U.S.C. § 2679(b). The exclusive remedy for the negligent or wrongful act or omission of an employee of the United States acting in the scope of office or employment is an action against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680.

When a plaintiff sues a federal employee for damages claims under state law, the Attorney General may certify under the Westfall Act that the employee acted in the scope of employment at the time of the incident out of which the plaintiff's claim arose. 28 U.S.C. § 2679(d)(2). Upon certification, the case must be removed from state court to federal district court "and the United States shall be substituted as the party defendant." *Id.* The Attorney General's certification of scope of employment is conclusive. *See id.* The Attorney General has delegated authority to certify scope of office or employment under § 2679 to the United States Attorneys, among others. 28 C.F.R. § 15.4(a).

Given that the United States Attorney for the District of Nevada certified that Dennis Pero was acting within the course and scope of his employment at the time of the accident alleged in this complaint, this action must be deemed to be an action against the United States under 28 U.S.C. § 2679(d)(2), and the United States “shall be substituted as the defendant” in place of Dennis Pero under that subsection. The United States therefore requests that the court amend the case caption and docket sheet to reflect this substitution. A proposed order for the court’s consideration is attached as Exhibit A.

Dated: November 15, 2024

JASON FRIERSON
United States Attorney

/s/ R. Thomas Colonna
R. THOMAS COLONNA
Assistant United States Attorney

Certificate of Service

I hereby certify that on November 15, 2024, the following individuals were served with the United States' Notice of Substitution of Parties and Motion to Update Case Caption and Docket Sheet by U.S. mail and email as follows:

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Attorneys for Plaintiff Eric Yohan Rojas Guancha

IT IS SO ORDERED.
Plaintiff did not oppose and
thus, consented to the granting
of the motion per LR 7-2(d).

/s/ R. Thomas Colonna
R. THOMAS COLONNA
Assistant United States Attorney
United States Attorney's Office

Hon. Maximiliano D. Couviller III
United States Magistrate Judge
Dated: 12-11-24